

IN RE: INVOKANA

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE: INVOKANA (CANAGLIFLOZIN)
PRODUCTS LIABILITY LITIGATION

CIVIL ACTION NUMBER:
3:16-md-02750-BRM-LHG

CASE MANAGEMENT
CONFERENCE

Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, New Jersey 08608
August 16, 2018
11:04 a.m.

B E F O R E:

THE HONORABLE BRIAN R. MARTINOTTI
THE HONORABLE LOIS H. GOODMAN
UNITED STATES DISTRICT JUDGES

A P P E A R A N C E S:

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Certified as true and correct as required by Title 28,
U.S.C., Section 753.

/s/ Megan McKay-Soule, RMR, CRR

IN RE: INVOKANA

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A P P E A R A N C E S , C O N T ' D :

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BY: JAMES F. MURDICA, TUCKER ELLIS LLP
Attorney for Defendants

ALSO PRESENT: AVIVA WEIN, ESQUIRE
Assistant General Counsel, Johnson & Johnson

—IN RE: INVOKANA—

1 THE DEPUTY COURT CLERK: All rise.

2 (Open court begins at 11:04 a.m.)

3 JUDGE MARTINOTTI: Good morning, everyone.

4 JUDGE GOODMAN: Good morning.

5 JUDGE MARTINOTTI: Counsel, appearing telephonically,
6 can you hear us?

7 THE DEPUTY COURT CLERK: One moment, please.

8 JUDGE MARTINOTTI: Okay.

9 (Brief pause.)

10 JUDGE MARTINOTTI: We are on the record. Before we
11 get started, it's about 20 after 11:00. Due to a technical
12 issue, the phone-in capability was not able to be engaged and
13 those that appeared by phone are unable to hear this
14 proceeding. The Court apologizes to them for the technical
15 mishap.

16 That being said, welcome. Counsel, Judge Goodman and I
17 welcome you this morning. Please put your appearances on the
18 record.

19 MR. CECCHI: Good morning, Your Honor. James Cecchi,
20 Carella, Byrne, liaison counsel on behalf of plaintiffs. And,
21 again, we do apologize for the technical issues. I have no
22 idea why we couldn't get that to work, but we will advise the
23 normal and usual coterie of plaintiffs' counsel of what
24 occurred here today.

25 JUDGE MARTINOTTI: Thanks.

—IN RE: INVOKANA—

1 MR. LONDON: Good morning, Your Honor. Michael
2 London for PSC.

3 MR. GRAND: Good morning, Your Honor. Jeff Grand for
4 PSC.

5 MR. O'BRIEN: Good morning, Your Honor. Tim O'Brien
6 for PSC from Levin Capontonio.

7 JUDGE MARTINOTTI: Welcome.

8 MR. LEWIS: Good morning, Your Honor. John Lewis for
9 defendants.

10 MS. BENEDICT: Mollie Benedict also for defendants.

11 MS. CHAWLA: Jennifer Chawla from Drinker Biddle also
12 for defendants.

13 MR. MURDICA: Good morning, Your Honor. Jim Murdica
14 for defendants.

15 MS. WEIN: Good morning, Your Honor. Aviva Wein for
16 Johnson & Johnson.

17 JUDGE MARTINOTTI: Welcome.

18 Before I get started today, I thought I would begin
19 with a brief overview of the status of the litigation, some of
20 which is known, some of which is unknown but will soon become
21 public.

22 Both myself and Judge Goodman have been very involved
23 in this matter. We've held monthly status conferences. We
24 have addressed and resolved numerous discovery issues. Let me
25 correct the record. Judge Goodman has addressed and resolved

IN RE: INVOKANA

1 many discovery issues. We both were overseeing the bellwether
2 selection process and set up an aggressive trial schedule.
3 While that matter was proceeding through discovery, there was
4 also a confidential settlement program and conferences being
5 held and administered by both Judge Goodman, myself, and
6 settlement counsel.

7 So, in essence, what we had existing were two tracks.
8 We had the litigation track under the capable stewardship of
9 litigation counsel, who is here today, and I thank you for
10 that, proceeding through litigation. And we had a settlement
11 track being shepherded through settlement or resolution
12 counsel, and I thank you for your efforts.

13 With the consent of both plaintiff and defendants, the
14 Court was engaged in the settlement discussions pursuant to an
15 initial order wherein the Court was permitted to have ex parte
16 conversation with both parties, as long as it addressed
17 settlement issues.

18 With that background, I am very pleased to announce the
19 resolution of the vast majority of the cases subject to the
20 MDL as well as many non-MDL cases.

21 As I said earlier, concurrent with the efforts of
22 resolution counsel were the efforts of litigation counsel, and
23 through the combined efforts this matter has been resolved.

24 There were numerous reasons for the resolution of the
25 MDL within less than two years of being transferred to this

—IN RE: INVOKANA—

1 district, including the active day-to-day work of the parties
2 through discovery, bellwether selection, and trial selection.
3 The attorneys on both sides did their jobs efficiently,
4 effectively, civilly, and represented their clients well.
5 This was not an easy task for the Court or for counsel.

6 Again, the Court thanks Janssen's resolution counsel
7 Jim Murdica and his team for a tremendous effort. The Court
8 also thanks the plaintiffs' leadership team and PSC, many of
9 whom have put their appearances on the record here this
10 morning, for their diligence and oversight in this process.

11 Both parties bought into the resolution process and
12 again worked well with each other and the Court. Though I
13 can't stress enough that the resolution process really worked
14 in tandem with the litigation process, and I think but for the
15 dual tracks this matter may not have been resolved.

16 The Court understands that just over 57 percent of the
17 cases and claims related to these coordinating proceedings and
18 approximately 80 percent of all filed claims have been
19 resolved and/or dismissed, or will be dismissed, and
20 additional settlements are occurring on a daily basis. The
21 Court also understands from the parties that approximately
22 less than 20 percent of the filed MDL cases remain.

23 Though most of the cases have been resolved, as counsel
24 is well aware, there's still much work to be done, especially
25 for those who are presently in settlement discussions with

—IN RE: INVOKANA—

1 Janssen's counsel for which a final resolution has not yet
2 been reached. I urge the parties to continue in good faith
3 discussions in these cases as well as cases similarly situated
4 so hopefully they, too, can resolve.

5 The Court is also mindful that there are new cases
6 being acquired and/or filed and many of these cases may
7 present problematic issues, including the lack of detail about
8 the claims or medical issues alleged, statute of limitations
9 defenses or legal challenges related to certain labeling
10 changes that the product has undergone. I'll explain how
11 these cases will be handled in a moment.

12 The Court directs Janssen and its resolution counsel to
13 continue working to resolve cases that are in queue as well as
14 those lining up based on the same resolution and criteria used
15 to date. This should be done as expeditiously as possible,
16 and I would like to be updated regularly on the status and
17 emerging issues.

18 That can be done on an as-needed basis, but as I will
19 say in a few minutes, we will have and will continue to have
20 monthly status and case management conferences that are set
21 forth in CMO No. 22, but please look on the docket to make
22 sure that the case is still scheduled. We are scheduled, I
23 believe, through the end of December. I anticipate in the
24 fall we'll set a schedule out further through the end of next
25 year.

—IN RE: INVOKANA—

1 The Court also directs that plaintiffs' counsel engage
2 in the process with Janssen to devote all appropriate and
3 available resources to obtaining the necessary medical records
4 specific to each plaintiff's claimed injuries to allow counsel
5 to submit the case for review by Janssen's team.

6 The Court understands that some plaintiffs' counsel
7 have been remiss in collecting and/or submitting medical
8 records. Unfortunately, those counsel are probably the ones
9 that are on the phone not hearing this. I hereby direct any
10 such counsel to allocate the appropriate resources to this
11 endeavor. This is important and confers a direct benefit on
12 your clients.

13 I'm going to ask plaintiffs' counsel to paraphrase this
14 paragraph to counsel, who would have appeared telephonically,
15 to remind them that it's in their best interest and their
16 client's best interest to work with Janssen to try to resolve
17 this matter and to follow up with any document requests and
18 other loose ends that need to be tied up before resolution can
19 be produced.

20 Janssen is also directed to continue reviewing
21 submissions in good faith and to ensure that it is adequate
22 staffing to review these changes as they are submitted.

23 Janssen is to report any problems in this regard to the
24 PSC leadership counsel so they may attempt to assist in
25 resolving any issues before they are brought to the attention

—IN RE: INVOKANA—

1 of the Court. The parties are directed to report the progress
2 of this process and issues, concerns, or problems that are
3 unresolved plaintiffs slash claimants affiliated with the MDL
4 to the court on or before October 15th, though we will
5 probably have a status prior thereto.

6 In light of this Court's familiarity with the
7 scientific and legal issues in this case, the bellwether
8 process, and the great success of resolution leading to the
9 resolution of such a large volume of claims, the Court has
10 determined that it is appropriate that I will retain
11 jurisdiction and enter an administrative order similar to
12 those utilized in other successful mass tort cases, such as
13 Vioxx under the leadership of Judge Fallon, Pradaxa under
14 Judge Herndon's leadership, and YAZ under Judge Herndon. I'm
15 going to take a bit of credit for that. I worked with Judge
16 Herndon on YAZ as a state court judge and we utilized these
17 orders in resolution of that litigation as well.

18 It is the Court's determination that the implementation
19 of this order will further the goals of these proceedings and
20 will ensure the timely evaluation and resolution of pending
21 and future filed MDL cases.

22 There will be two groups of cases moving forward:
23 Those that were filed before today, August 16th, will be one
24 group. They will be called existing cases. Those that are
25 filed today, or moving forward, will be newly filed cases.

—IN RE: INVOKANA—

1 The administrative order, once entered, will have certain
2 medical record preservation and discovery obligations that
3 must be satisfied on an aggressive timeline to facilitate,
4 whether by way of settlement or dismissal, a speedy resolution
5 of future filed cases in this MDL and of currently pending
6 cases that are not part of the pending evaluation and
7 negotiation by counsel for Janssen.

8 In light of the ongoing submissions and negotiations
9 with counsel for Janssen, the order that I will be entering
10 will stay application of all obligations for currently pending
11 cases until October 30th to permit those firms that have
12 already engaged to begin or have initiated resolution to
13 discussions with counsel for Janssen an additional time to
14 complete the discussions.

15 Considering the resolution of so many cases and the
16 claims to date and the need to wind this MDL down, the Court
17 views such an administrative order and it necessary under the
18 unique circumstances of this MDL. It affords litigants their
19 day in court, yet affords the defendants some window of
20 certainty. We have made excellent process in the past two
21 years and I expect the parties to continue to work with me
22 following the implementation of the order and compliance with
23 its deadlines to ensure that the goals of these proceedings
24 are promptly and efficiently achieved.

25 Again, counsel, I thank you for your efforts, your

—IN RE: INVOKANA—

1 ability to think outside the box, to work with each other, to
2 work with the Court, issues that came up. This was a highly
3 technical case, yet the discovery was resolved through Judge
4 Goodman, whether it be a conference, telephone conference or
5 otherwise. I appreciate litigation counsel moving the ball
6 along. I believe that was an impetus to the settlement as
7 well and, of course, resolution counsel in working in good
8 faith with all the parties.

9 MR. CECCHI: Judge, I just want to note, I think all
10 the parties -- I can speak for the plaintiffs -- thank Your
11 Honor and Judge Goodman for your case management and able
12 guidance of this MDL. I think it illustrates what can get
13 done in the short period of time with cooperation between the
14 parties and the Court. Thank you.

15 MR. LEWIS: On behalf of defendants, Your Honors, we
16 would echo that sentiment. And, again, thank you, Your
17 Honors, for all of the effort and work you put into this
18 litigation.

19 JUDGE MARTINOTTI: Thanks.

20 MR. LONDON: Your Honor, I want to acknowledge we
21 will follow up with a directive to notify plaintiffs' counsel
22 on the medical records and certainly, as Mr. Cecchi indicated,
23 plaintiffs in the PSC, Mr. Grand, Mr. O'Brien, Mr. Seeger, we
24 all appreciate the Court's time and truly commitment to this
25 case. Those monthly status conferences, the trial process,

—IN RE: INVOKANA—

1 the discovery process, your commitment to this and our clients
2 and the plaintiffs, the PSC in the interest of counsel is
3 appreciated and I think it's recognized and this is the result
4 in two years.

5 MR. MURDICA: And I just want to say for the record,
6 Your Honor, without the Court's help we wouldn't be where we
7 are today, and so we're very grateful on our end. And the PSC
8 is as zealous as any lawyers that I've encountered but equally
9 professional, and I would like to thank them for their work
10 throughout this process.

11 JUDGE MARTINOTTI: Okay. We are off the record.
12 Back on the record.

13 MS. BENEDICT: Do you want to cancel the status
14 conference for next week?

15 JUDGE MARTINOTTI: Yes. The status conference for
16 next week will be canceled.

17 JUDGE GOODMAN: I just wanted to add and chime in
18 with what Judge Martinotti has said, I mean, there are a lot
19 of very contentious issues that have been raised in this case
20 and resolved in this case by the counsel that I know I never
21 had to see. And the issues that I did see were the ones that
22 were really vetted and narrowed and even then we were able to
23 work them out in a very professional way. And I really
24 appreciate that.

25 MS. CHAWLA: Thank you, Your Honor. It's a pleasure

IN RE: INVOKANA

1 to be in this courtroom.

2 JUDGE MARTINOTTI: Now we're off the record.

3 THE DEPUTY COURT CLERK: All rise.

4 (Court concludes at 11:30 a.m.)

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IN RE: INVOKANA

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REPORTER'S CERTIFICATE.

I, **Megan McKay-Soule, RMR, CRR**, Official Court Reporter of the United States District Court for the District of New Jersey, do hereby certify that the foregoing proceedings are a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I further certify that I am neither related to any of the parties by blood or marriage, nor do I have any interest in the outcome of the above matter.

/S/ Megan McKay-Soule, RMR, CRR August 16, 2018

Court Reporter

Date

/	addressed [3] - 4:24, 4:25, 5:16	begins [1] - 3:2	challenges [1] - 7:9	counsel [31] - 3:5, 3:16, 3:20, 3:23, 5:6, 5:9, 5:12, 5:22, 6:5, 6:6, 6:23, 7:1, 7:12, 8:1, 8:4, 8:6, 8:8, 8:10, 8:13, 8:14, 8:24, 10:7, 10:9, 10:13, 10:25, 11:5, 11:7, 11:21, 12:2, 12:20
/S [2] - 1:25, 14:15	adequate [1] - 8:21	behalf [2] - 3:20, 11:15	changes [2] - 7:10, 8:22	course [1] - 11:7
0	administered [1] - 5:5	bellwether [3] - 5:1, 6:2, 9:7	Chawla [1] - 4:11	COURT [4] - 1:1, 3:1, 3:7, 13:3
08608 [1] - 1:7	administrative [3] - 9:11, 10:1, 10:17	BENEDICT [3] - 1:21, 4:10, 12:13	CHAWLA [3] - 2:3, 4:11, 12:25	court [4] - 3:2, 9:4, 9:16, 10:19
1	advise [1] - 3:22	Benedict [1] - 4:10	chime [1] - 12:17	Court [22] - 3:14, 5:14, 5:15, 6:5, 6:6, 6:7, 6:12, 6:16, 6:21, 7:5, 7:12, 8:1, 8:6, 9:1, 9:9, 10:16, 11:2, 11:14, 13:4, 14:4, 14:5, 14:16
11:00 [1] - 3:11	affiliated [1] - 9:3	benefit [1] - 8:11	CHRISTOPHER [1] - 1:12	Court's [4] - 9:6, 9:18, 11:24, 12:6
11:04 [2] - 1:8, 3:2	affords [2] - 10:18, 10:19	best [2] - 8:15, 8:16	circumstances [1] - 10:18	Courthouse [1] - 1:6
11:30 [1] - 13:4	aggressive [2] - 5:2, 10:3	between [1] - 11:13	CIVIL [1] - 1:3	courtroom [1] - 13:1
15th [1] - 9:4	AGNELLO [1] - 1:14	Biddle [1] - 4:11	civily [1] - 6:4	credit [1] - 9:15
16 [2] - 1:7, 14:15	alleged [1] - 7:8	BIDDLE [1] - 2:3	claimants [1] - 9:3	criteria [1] - 7:14
16th [1] - 9:23	allocate [1] - 8:10	bit [1] - 9:15	claimed [1] - 8:4	CRR [3] - 1:25, 14:4, 14:15
2	allow [1] - 8:4	blood [1] - 14:11	claims [5] - 6:17, 6:18, 7:8, 9:9, 10:16	
20 [2] - 3:11, 6:22	ALSO [1] - 2:7	bought [1] - 6:11	Clarkson [1] - 1:6	
2018 [2] - 1:7, 14:15	announce [1] - 5:18	box [1] - 11:1	CLERK [3] - 3:1, 3:7, 13:3	
22 [1] - 7:21	anticipate [1] - 7:23	BRIAN [1] - 1:9	client's [1] - 8:16	
28 [1] - 1:24	apologize [1] - 3:21	brief [2] - 3:9, 4:19	clients [3] - 6:4, 8:12, 12:1	
3	apologizes [1] - 3:14	BRODY [1] - 1:14	CMO [1] - 7:21	
30th [1] - 10:11	appearances [2] - 3:17, 6:9	brought [1] - 8:25	collecting [1] - 8:7	
3:16-md-02750-BRM-LHG [1] - 1:3	appeared [2] - 3:13, 8:14	Building [1] - 1:6	combined [1] - 5:23	
4	appearing [1] - 3:5	BY [6] - 1:12, 1:15, 1:19, 1:21, 2:3, 2:5	commitment [2] - 11:24, 12:1	
402 [1] - 1:6	application [1] - 10:10	Byrne [1] - 3:20	complete [1] - 10:14	
5	appreciate [3] - 11:5, 11:24, 12:24	BYRNE [1] - 1:14	compliance [1] - 10:22	
57 [1] - 6:16	appreciated [1] - 12:3	C	concerns [1] - 9:2	
7	appropriate [3] - 8:2, 8:10, 9:10	CANAGLIFLOZIN [1] - 1:2	concludes [1] - 13:4	
753 [1] - 1:24	as-needed [1] - 7:18	cancel [1] - 12:13	concurrent [1] - 5:21	
8	assist [1] - 8:24	canceled [1] - 12:16	CONFERENCE [1] - 1:5	
80 [1] - 6:18	Assistant [1] - 2:8	capability [1] - 3:12	conference [4] - 11:4, 12:14, 12:15	
A	attempt [1] - 8:24	capable [1] - 5:8	conferences [4] - 4:23, 5:4, 7:20, 11:25	
a.m [3] - 1:8, 3:2, 13:4	attention [1] - 8:25	Capantonio [1] - 4:6	confers [1] - 8:11	
ability [1] - 11:1	ATTORNEY [3] - 1:15, 1:17, 1:19	CARELLA [1] - 1:14	confidential [1] - 5:4	
able [3] - 3:12, 11:11, 12:22	Carella [1] - 3:20	case [9] - 7:20, 7:22, 8:5, 9:7, 11:3, 11:11, 11:25, 12:19, 12:20	consent [1] - 5:13	
accurate [1] - 14:7	Attorney [2] - 2:4, 2:6	CASE [1] - 1:4	considering [1] - 10:15	
achieved [1] - 10:24	attorneys [1] - 6:3	cases [20] - 5:19, 5:20, 6:17, 6:22, 6:23, 7:3, 7:5, 7:6, 7:11, 7:13, 9:12, 9:21, 9:22, 9:24, 9:25, 10:5, 10:6, 10:11, 10:15	contentious [1] - 12:19	
acknowledge [1] - 11:20	ATTORNEYS [1] - 1:13	Cecchi [2] - 3:19, 11:22	continue [5] - 7:2, 7:13, 7:19, 8:20, 10:21	
acquired [1] - 7:6	Attorneys [1] - 1:22	CECCHI [4] - 1:14, 1:15, 3:19, 11:9	conversation [1] - 5:16	
ACTION [1] - 1:3	August [3] - 1:7, 9:23, 14:15	certain [2] - 7:9, 10:1	cooperation [1] - 11:13	
active [1] - 6:1	available [1] - 8:3	certainly [1] - 11:22	coordinating [1] - 6:17	
add [1] - 12:17	Aviva [1] - 4:15	certainty [1] - 10:20	correct [2] - 1:24, 4:25	
additional [2] - 6:20, 10:13	AVIVA [1] - 2:7	CERTIFICATE [1] - 14:2	coterie [1] - 3:23	
	aware [1] - 6:24	Certified [1] - 1:24	Counsel [1] - 2:8	
	B	certify [2] - 14:6, 14:10		
	background [1] - 5:18			
	ball [1] - 11:5			
	BARNES [1] - 2:5			
	based [1] - 7:14			
	basis [2] - 6:20, 7:18			
	become [1] - 4:20			
	begin [2] - 4:18, 10:12			

<p>11:3, 12:1 discussions [5] - 5:14, 6:25, 7:3, 10:13, 10:14 dismissal [1] - 10:4 DISTRICT [3] - 1:1, 1:1, 1:10 District [2] - 14:5 district [1] - 6:1 docket [1] - 7:21 document [1] - 8:17 done [4] - 6:24, 7:15, 7:18, 11:13 DOUGLAS [1] - 1:16 down [1] - 10:16 Drinker [1] - 4:11 DRINKER [1] - 2:3 dual [1] - 6:15 due [1] - 3:11</p>	<p>expeditiously [1] - 7:15 explain [1] - 7:10</p> <p>F</p> <p>facilitate [1] - 10:3 faith [3] - 7:2, 8:21, 11:8 fall [1] - 7:24 Fallon [1] - 9:13 familiarity [1] - 9:6 few [1] - 7:19 filed [8] - 6:18, 6:22, 7:6, 9:21, 9:23, 9:25, 10:5 final [1] - 7:1 firms [1] - 10:11 fisher [1] - 1:6 follow [2] - 8:17, 11:21 following [1] - 10:22 FOR [5] - 1:1, 1:13, 1:15, 1:17, 1:19 foregoing [1] - 14:6 forth [2] - 7:21, 14:9 forward [2] - 9:22, 9:25 future [2] - 9:21, 10:5</p> <p>G</p> <p>General [1] - 2:8 goals [2] - 9:19, 10:23 Goodman [6] - 3:16, 4:22, 4:25, 5:5, 11:4, 11:11 GOODMAN [3] - 1:9, 3:4, 12:17 grand [1] - 11:23 GRAND [2] - 1:13, 4:3 Grand [1] - 4:3 grateful [1] - 12:7 great [1] - 9:8 group [1] - 9:24 groups [1] - 9:22 guidance [1] - 11:12</p> <p>H</p> <p>handled [1] - 7:11 hear [2] - 3:6, 3:13 hearing [1] - 8:9 held [2] - 4:23, 5:5 help [1] - 12:6 hereby [2] - 8:9, 14:6 hereinbefore [1] - 14:9 Herndon [2] - 9:14, 9:16 Herndon's [1] - 9:14</p>	<p>highly [1] - 11:2 Honor [11] - 3:19, 4:1, 4:3, 4:5, 4:8, 4:13, 4:15, 11:11, 11:20, 12:6, 12:25 HONORABLE [2] - 1:9, 1:9 Honors [2] - 11:15, 11:17 hopefully [1] - 7:4</p> <p>I</p> <p>idea [1] - 3:22 illustrates [1] - 11:12 impetus [1] - 11:6 implementation [2] - 9:18, 10:22 important [1] - 8:11 IN [1] - 1:2 including [2] - 6:1, 7:7 indicated [1] - 11:22 initial [1] - 5:15 initiated [1] - 10:12 injuries [1] - 8:4 interest [4] - 8:15, 8:16, 12:2, 14:11 INVOKANA [1] - 1:2 involved [1] - 4:22 issue [1] - 3:12 issues [13] - 3:21, 4:24, 5:1, 5:17, 7:7, 7:8, 7:17, 8:25, 9:2, 9:7, 11:2, 12:19, 12:21</p> <p>J</p> <p>JAMES [2] - 1:15, 2:5 James [1] - 3:19 Janssen [8] - 7:12, 8:2, 8:16, 8:20, 8:23, 10:7, 10:9, 10:13 Janssen's [3] - 6:6, 7:1, 8:5 Jeff [1] - 4:3 JEFFREY [1] - 1:13 JENNIFER [1] - 2:3 Jennifer [1] - 4:11 JERSEY [1] - 1:1 Jersey [2] - 1:7, 14:6 Jim [2] - 4:13, 6:7 jobs [1] - 6:3 JOHN [1] - 1:21 John [1] - 4:8 Johnson [4] - 2:8, 4:16 Judge [10] - 3:16, 4:22, 5:5, 9:13, 9:14, 9:15, 11:3, 11:11,</p>	<p>12:18 JUDGE [13] - 3:3, 3:4, 3:5, 3:8, 3:10, 3:25, 4:7, 4:17, 11:19, 12:11, 12:15, 12:17, 13:2 judge [3] - 4:25, 9:16, 11:9 JUDGES [1] - 1:10 jurisdiction [1] - 9:11</p> <p>K</p> <p>known [1] - 4:20</p> <p>L</p> <p>labeling [1] - 7:9 lack [1] - 7:7 large [1] - 9:9 lawyers [1] - 12:8 leadership [4] - 6:8, 8:24, 9:13, 9:14 leading [1] - 9:8 legal [2] - 7:9, 9:7 less [2] - 5:25, 6:22 Levin [1] - 4:6 LEVIN [1] - 1:18 Lewis [1] - 4:8 LEWIS [3] - 1:21, 4:8, 11:15 LIABILITY [1] - 1:3 liaison [1] - 3:20 light [2] - 9:6, 10:8 limitations [1] - 7:8 lining [1] - 7:14 litigants [1] - 10:18 litigation [9] - 4:19, 5:8, 5:9, 5:10, 5:22, 6:14, 9:17, 11:5, 11:18 LITIGATION [1] - 1:3 LLP [5] - 1:12, 1:20, 2:3, 2:5, 2:5 LOIS [1] - 1:9 London [1] - 4:2 LONDON [4] - 1:16, 1:17, 4:1, 11:20 look [1] - 7:21 loose [1] - 8:18</p> <p>M</p> <p>majority [1] - 5:19 MANAGEMENT [1] - 1:4 management [2] - 7:20, 11:11 marriage [1] - 14:11 Martinotti [1] - 12:18</p>	<p>MARTINOTTI [12] - 1:9, 3:3, 3:5, 3:8, 3:10, 3:25, 4:7, 4:17, 11:19, 12:11, 12:15, 13:2 mass [1] - 9:12 matter [6] - 4:23, 5:3, 5:23, 6:15, 8:17, 14:12 McKay [3] - 1:25, 14:4, 14:15 McKay-Soule [3] - 1:25, 14:4, 14:15 MDL [10] - 5:20, 5:25, 6:22, 9:3, 9:21, 10:5, 10:16, 10:18, 11:12 mean [1] - 12:18 medical [5] - 7:8, 8:3, 8:7, 10:2, 11:22 Megan [3] - 1:25, 14:4, 14:15 Michael [1] - 4:1 MICHAEL [1] - 1:17 mindful [1] - 7:5 minutes [1] - 7:19 mishap [1] - 3:15 MOLLIE [1] - 1:21 Mollie [1] - 4:10 moment [2] - 3:7, 7:11 monthly [3] - 4:23, 7:20, 11:25 morning [11] - 3:3, 3:4, 3:17, 3:19, 4:1, 4:3, 4:5, 4:8, 4:13, 4:15, 6:10 most [1] - 6:23 moving [3] - 9:22, 9:25, 11:5 MR [10] - 3:19, 4:1, 4:3, 4:5, 4:8, 4:13, 11:9, 11:15, 11:20, 12:5 MS [5] - 4:10, 4:11, 4:15, 12:13, 12:25 Murdica [2] - 4:13, 6:7 MURDICA [3] - 2:5, 4:13, 12:5 must [1] - 10:3</p> <p>N</p> <p>narrowed [1] - 12:22 necessary [2] - 8:3, 10:17 need [2] - 8:18, 10:16 needed [1] - 7:18 negotiation [1] - 10:7 negotiations [1] - 10:8 never [1] - 12:20 NEW [1] - 1:1</p>
--	--	---	--	--

<p>new [1] - 7:5 New [2] - 1:7, 14:5 newly [1] - 9:25 next [3] - 7:24, 12:14, 12:16 non [1] - 5:20 non-MDL [1] - 5:20 normal [1] - 3:23 note [1] - 11:9 notify [1] - 11:21 NUMBER [1] - 1:3 numerous [2] - 4:24, 5:24</p>	<p>pause [1] - 3:9 pending [4] - 9:20, 10:5, 10:6, 10:10 percent [3] - 6:16, 6:18, 6:22 period [1] - 11:13 permit [1] - 10:11 permitted [1] - 5:15 phone [3] - 3:12, 3:13, 8:9 phone-in [1] - 3:12 place [1] - 14:8 plaintiff [1] - 5:13 plaintiff's [1] - 8:4 plaintiffs [5] - 3:20, 9:3, 11:10, 11:23, 12:2 PLAINTIFFS [4] - 1:13, 1:15, 1:17, 1:19 plaintiffs' [6] - 3:23, 6:8, 8:1, 8:6, 8:13, 11:21 pleased [1] - 5:18 pleasure [1] - 12:25 possible [1] - 7:15 Pradaxa [1] - 9:13 PRESENT [1] - 2:7 present [1] - 7:7 presently [1] - 6:25 preservation [1] - 10:2 problematic [1] - 7:7 problems [2] - 8:23, 9:2 proceeding [3] - 3:14, 5:3, 5:10 proceedings [4] - 6:17, 9:19, 10:23, 14:6 process [12] - 5:2, 6:10, 6:11, 6:13, 6:14, 8:2, 9:2, 9:8, 10:20, 11:25, 12:1, 12:10 produced [1] - 8:19 product [1] - 7:10 PRODUCTS [1] - 1:3 professional [2] - 12:9, 12:23 program [1] - 5:4 progress [1] - 9:1 promptly [1] - 10:24 PSC [8] - 4:2, 4:4, 4:6, 6:8, 8:24, 11:23, 12:2, 12:7 public [1] - 4:21 pursuant [1] - 5:14 put [3] - 3:17, 6:9, 11:17</p>	<p>Q</p> <p>queue [1] - 7:13</p> <p>R</p> <p>raised [1] - 12:19 RE [1] - 1:2 reached [1] - 7:2 really [3] - 6:13, 12:22, 12:23 reasons [1] - 5:24 REATH [1] - 2:3 recognized [1] - 12:3 record [9] - 3:10, 3:18, 4:25, 6:9, 10:2, 12:5, 12:11, 12:12, 13:2 records [3] - 8:3, 8:8, 11:22 regard [1] - 8:23 regularly [1] - 7:16 related [3] - 6:17, 7:9, 14:10 remain [1] - 6:22 remind [1] - 8:15 remiss [1] - 8:7 report [2] - 8:23, 9:1 Reporter [2] - 14:4, 14:16 REPORTER'S [1] - 14:2 represented [1] - 6:4 requests [1] - 8:17 required [1] - 1:24 resolution [19] - 5:11, 5:19, 5:22, 5:24, 6:6, 6:11, 6:13, 7:1, 7:12, 7:14, 8:18, 9:8, 9:9, 9:17, 9:20, 10:4, 10:12, 10:15, 11:7 resolve [3] - 7:4, 7:13, 8:16 resolved [8] - 4:24, 4:25, 5:23, 6:15, 6:19, 6:23, 11:3, 12:20 resolving [1] - 8:25 resources [2] - 8:3, 8:10 result [1] - 12:3 retain [1] - 9:10 review [2] - 8:5, 8:22 reviewing [1] - 8:20 rise [2] - 3:1, 13:3 RMR [3] - 1:25, 14:4, 14:15</p> <p>S</p> <p>satisfied [1] - 10:3</p>	<p>schedule [2] - 5:2, 7:24 scheduled [2] - 7:22 scientific [1] - 9:7 Section [1] - 1:24 see [2] - 12:21 SEEGER [2] - 1:12, 1:12 Seeger [1] - 11:23 selection [3] - 5:2, 6:2 sentiment [1] - 11:16 set [4] - 5:2, 7:20, 7:24, 14:9 settlement [9] - 5:4, 5:6, 5:10, 5:11, 5:14, 5:17, 6:25, 10:4, 11:6 settlements [1] - 6:20 shepherded [1] - 5:11 short [1] - 11:13 sides [1] - 6:3 similar [1] - 9:11 similarly [1] - 7:3 situated [1] - 7:3 slash [1] - 9:3 soon [1] - 4:20 Soule [3] - 1:25, 14:4, 14:15 specific [1] - 8:4 speedy [1] - 10:4 staffing [1] - 8:22 started [2] - 3:11, 4:18 State [1] - 1:6 state [1] - 9:16 States [1] - 14:5 STATES [2] - 1:1, 1:10 status [8] - 4:19, 4:23, 7:16, 7:20, 9:5, 11:25, 12:13, 12:15 statute [1] - 7:8 stay [1] - 10:10 stenographically [1] - 14:8 stewardship [1] - 5:8 still [2] - 6:24, 7:22 Street [1] - 1:6 stress [1] - 6:13 subject [1] - 5:19 submissions [2] - 8:21, 10:8 submit [1] - 8:5 submitted [1] - 8:22 submitting [1] - 8:7 success [1] - 9:8 successful [1] - 9:12</p> <p>T</p> <p>T'D [1] - 2:1 tandem [1] - 6:14</p>	<p>task [1] - 6:5 team [3] - 6:7, 6:8, 8:5 technical [4] - 3:11, 3:14, 3:21, 11:3 telephone [1] - 11:4 telephonically [2] - 3:5, 8:14 testimony [1] - 14:7 THE [6] - 1:1, 1:9, 1:9, 3:1, 3:7, 13:3 thereto [1] - 9:5 THORNBURG [1] - 2:5 throughout [1] - 12:10 tied [1] - 8:18 Tim [1] - 4:5 timeline [1] - 10:3 timely [1] - 9:20 TIMOTHY [1] - 1:19 Title [1] - 1:24 today [6] - 3:24, 4:18, 5:9, 9:23, 9:25, 12:7 tort [1] - 9:12 track [2] - 5:8, 5:11 tracks [2] - 5:7, 6:15 transcript [1] - 14:7 transferred [1] - 5:25 tremendous [1] - 6:7 Trenton [1] - 1:7 trial [3] - 5:2, 6:2, 11:25 true [2] - 1:24, 14:7 truly [1] - 11:24 try [1] - 8:16 TUCKER [2] - 1:20, 2:5 two [5] - 5:7, 5:25, 9:22, 10:20, 12:4</p> <p>U</p> <p>U.S [1] - 1:6 U.S.C [1] - 1:24 unable [1] - 3:13 under [5] - 5:8, 9:13, 9:14, 10:17 undergone [1] - 7:10 unfortunately [1] - 8:8 unique [1] - 10:18 United [1] - 14:5 UNITED [1] - 1:1 uNITED [1] - 1:10 unknown [1] - 4:20 unresolved [1] - 9:3 up [6] - 5:2, 7:14, 8:17, 8:18, 11:2, 11:21 updated [1] - 7:16 urge [1] - 7:2 usual [1] - 3:23 utilized [2] - 9:12, 9:16</p>
<p>O</p> <p>O'BRIEN [2] - 1:19, 4:5 O'Brien [2] - 4:5, 11:23 obligations [2] - 10:2, 10:10 obtaining [1] - 8:3 occurred [1] - 3:24 occurring [1] - 6:20 October [2] - 9:4, 10:11 OF [1] - 1:1 Official [1] - 14:4 OLSTEIN [1] - 1:14 once [1] - 10:1 one [2] - 3:7, 9:23 ones [2] - 8:8, 12:21 ongoing [1] - 10:8 Open [1] - 3:2 order [7] - 5:15, 9:11, 9:19, 10:1, 10:9, 10:17, 10:22 orders [1] - 9:17 otherwise [1] - 11:5 outcome [1] - 14:12 outside [1] - 11:1 overseeing [1] - 5:1 oversight [1] - 6:10 overview [1] - 4:19</p>	<p>P</p> <p>P.C [1] - 1:16 PAPANTONIO [1] - 1:18 paragraph [1] - 8:14 paraphrase [1] - 8:13 part [1] - 10:6 parte [1] - 5:15 parties [11] - 5:16, 6:1, 6:11, 6:21, 7:2, 9:1, 10:21, 11:8, 11:10, 11:14, 14:11 past [1] - 10:20</p>			

V
vast ^[1] - 5:19 vetted ^[1] - 12:22 views ^[1] - 10:17 Vioxx ^[1] - 9:13 volume ^[1] - 9:9
W
week ^[2] - 12:14, 12:16 WEIN ^[2] - 2:7, 4:15 Wein ^[1] - 4:15 WEISS ^[1] - 1:12 welcome ^[4] - 3:16, 3:17, 4:7, 4:17 wherein ^[1] - 5:15 wind ^[1] - 10:16 window ^[1] - 10:19
Y
YAZ ^[2] - 9:14, 9:16 year ^[1] - 7:25 years ^[3] - 5:25, 10:21, 12:4
Z
zealous ^[1] - 12:8